

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
CENTRAL DIVISION**

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EXPRESS FRANCHISE SERVICES, L.P., a Texas limited partnership, and WRS PERSONNEL FINDERS OF MASSACHUSETTS, INC., D/B/A EXPRESS PERSONNEL SERVICES, a Massachusetts corporation,

Plaintiffs,

vs.

EXPRESS TEMPS, INC., a Massachusetts corporation, and WILLIAM J. COMEAU, an individual and citizen of Massachusetts,

Defendants.

U.S. DISTRICT COURT  
DISTRICT OF MASS.  
**04-40003**

Civil Action No.

**JURY TRIAL DEMANDED**

**PRELIMINARY INJUNCTION  
REQUESTED**

**VERIFIED COMPLAINT**

Plaintiffs Express Franchise Services, L.P., and WRS Personnel Finders of Massachusetts, Inc., d/b/a Express Personnel Services, (collectively, "Plaintiffs"), by their undersigned attorneys, and for their complaint against defendants Express Temps, Inc., and William Comeau (collectively, "Defendants") state as follows:

**Nature of Action**

1. Plaintiffs bring this action for damages and preliminary and permanent injunctive relief to prevent the continuing and irreparable injury Plaintiffs are suffering as a result of Defendants' acts of trademark infringement, false designation of origin, trademark dilution, unfair competition, unfair trade practices, and tortious interference with contractual relations, in violation of the laws of the United States and the Commonwealth of Massachusetts.

RECEIPT # 14-341  
AMOUNT \$104347 150<sup>00</sup>

SUMMONS ISSUED 2  
LOCAL RULE 4.1 ✓  
WAIVER FORM ✓  
MCF ISSUED ✓  
BY DPTY. CLK. KY  
DATE 1-9-04

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**The Parties**

2. Plaintiff Express Franchise Services, L.P. ("Express") is, and at all times material hereto has been, a limited partnership organized and existing under the laws of the State of Texas, having its principal office and place of business located at 8516 Northwest Expressway, Oklahoma City, Oklahoma 73123.

3. Plaintiff WRS Personnel Finders of Massachusetts, Inc., d/b/a Express Personnel Services ("Franchisee"), is, and at all times material hereto has been, a corporation organized and existing under the laws of the Commonwealth of Massachusetts, having its principal office and place of business located at 67 Millbrook Street, Worcester, Massachusetts 01606.

4. Defendant Express Temps, Inc. ("Express Temps") upon information and belief, is, and at all times material hereto has been, a corporation organized and existing under the laws of the Commonwealth of Massachusetts, having its principal office and place of business located at 390 Main Street, Suite 300, Worcester, Massachusetts 01608.

5. Defendant William J. Comeau, upon information and belief, is an individual residing in the Commonwealth of Massachusetts and this judicial district.

6. Upon information and belief, Defendant Express Temps' predecessor-in-interest was founded in or about 1997, and was purchased by Defendant Comeau on or about October of 1998.

7. Defendant Comeau incorporated Defendant Express Temps on or about January 11, 1999.

8. Upon information and belief, Defendant Comeau is the sole shareholder, sole officer and sole director of Defendant Express Temps.

9. Upon information and belief, Defendant Express Temps is the alter ego of Defendant Comeau.

**Jurisdiction and Venue**

10. These claims arise under the Federal Trademark Act of 1946 as amended, 15 U.S.C. § 1051 et seq. (the “Lanham Act”) and the statutory and common law of the Commonwealth of Massachusetts.

11. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331 and 1338(a) and (b). This Court has jurisdiction over the state law claims pursuant to 28 U.S.C. §§ 1338(b) and 1367(a).

12. Venue is proper under 28 U.S.C. §§ 1391(b)(1), (b)(2) and (c), as this action arises under the laws of the United States and each Defendant resides within the Commonwealth of Massachusetts and this judicial district. Moreover, a substantial part of the events or omissions giving rise to the claims occurred in this judicial district, or a substantial part of property that is the subject of this action is situated in this judicial district.

**Plaintiffs’ Business and Service Marks**

13. For over twenty (20) years, Plaintiff Express has been engaged in the business of, among other things, providing temporary and permanent employment agency services and staffing services under Express’ valuable and well known EXPRESS family of marks, which include common law trademarks and service marks and well as service marks registered with the United States Patent and Trademark Office (“USPTO”) and the Office of the Secretary of the Commonwealth of Massachusetts.

14. Plaintiff Express is the owner of the following EXPRESS® service marks, each registered in International Class 35 on the Principal Register of the USPTO for a variety of

personnel services including temporary and permanent employment services and staffing services (collectively, the “EXPRESS® Marks”), copies of the registrations of which are attached hereto and incorporated herein as **Exhibits 1-10**, respectively:

EXPRESS HEALTH SERVICE® and Design	1,623,976 issued November 20, 1990	Health and medical employment agency services
EXPRESS®	1,647,022 issued June 4, 1991	Temporary help and employment agency services
EXPRESS® and Design	1,700,779 issued July 14, 1992	Permanent and temporary employment services
EXPRESS PERSONNEL SERVICES® and Design	1,708,586 issued August 18, 1992	Employment agency services
EXPRESS TEMPORARY SERVICE® and Design	1,718,629 issued September 11, 1992	Temporary help and employment agency services
EXPRESS STAFFING SERVICES® and Design	1,946,030 issued January 2, 1996	Employment staffing services
EXPRESS HUMAN RESOURCES® and Design	2,124,198 issued December 23, 1997	Employee leasing and personnel recruiting
EXPRESS MANAGEMENT SERVICES® and Design	2,225,130 issued February 23, 1999	Administrative personnel and recruitment as well as permanent and temporary employment agency services
EXPRESS PROFESSIONAL STAFFING®	2,530,726 issued January 15, 2002	Temporary and permanent employee placement services
EXPRESS PERSONNEL SERVICES®	2,771,742 issued October 7, 2003	Personnel services featuring providing temporary employment services, full-time employment service, professional staffing services, contract staffing services, employment search services and executive search services

15. Furthermore, Plaintiff Express is the owner of the following EXPRESS<sup>SM</sup> service marks, each registered with the Office of the Secretary of the Commonwealth of Massachusetts (also, collectively, the “EXPRESS® Marks”), copies of the registrations of which are attached hereto and incorporated herein as **Exhibits 11-12**, respectively:

EXPRESS PERSONNEL SERVICES <sup>SM</sup>	62,300, issued December 10, 2002	Personnel services which include providing temporary employment services, full-time employment services, professional staffing services, contract staffing services, employment search services and executive search services
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EXPRESS TEMPORARY SERVICES <sup>SM</sup>	62,299, issued December 10, 2002	Personnel services which include providing temporary employment services, full-time employment services, professional staffing services, contract staffing services, employment search services and executive search services
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16. By virtue of the aforementioned registrations, the EXPRESS® Marks are presumptively valid. Further, the aforementioned registrations constitute constructive notice to Defendants that Plaintiff Express owns the EXPRESS® Marks, including specifically the EXPRESS® and EXPRESS TEMPORARY SERVICES® marks, in connection with the goods and services identified therein.

17. The EXPRESS® Marks are inherently distinctive, and several of the federally registered EXPRESS® Marks—including specifically EXPRESS TEMPORARY SERVICE® and Design, Registration No. 1,718,629, and EXPRESS® and Design, Registration No. 1,700,779 (collectively, the “Incontestable Marks”—are incontestable, because Plaintiff Express has used such Incontestable Marks continuously for five consecutive years and has complied with all statutory formalities under 15 U.S.C. § 1065, including the filing of all requisite declarations, and because there is no judicial proceeding pending concerning Plaintiff Express’ rights in such Incontestable Marks.

18. Moreover, Plaintiff Express asserts that it currently operates a nationwide franchise system with more than 400 franchisees operating under the EXPRESS® Marks.

19. For over twenty (20) years—long prior to the acts of Defendants complained of herein—Plaintiff Express has expended, and continues to expend, a substantial amount of time, money, and effort promoting, marketing, and advertising its EXPRESS® services under and in connection with its valuable and highly recognized EXPRESS® Marks. Plaintiff Express has expended over \$100 million in the last twenty (20) years to promote its company and services,

including, without limitation, on the Internet, in national publications, newspapers, at trade shows and on the radio and television. Moreover, Plaintiff Express has consistently been recognized by the trade as one of the nation's top franchise companies and one of the largest and fastest-growing privately-held companies. For example, in October of 2002, Franchise Times ranked Plaintiff Express as #1 of the top 200 franchise companies, and in 2003 and prior years, Entrepreneur ranked Plaintiff Express as #1 in franchise companies for business services/staffing. Further, on November 27, 2000, Forbes ranked Plaintiff Express as #424 of the 500 top private companies for 1999 revenue, and in December of 1998, Inc. ranked Plaintiff Express as #9 of the 500 fastest growing private companies.

20. Plaintiff Express has provided such services identified by its EXPRESS® Marks in substantial quantities in this judicial district and throughout the United States, as well as in several foreign countries. Plaintiff Express has realized over \$8 billion in gross revenues over the last twenty (20) years in the provision of such services.

21. Due to the high quality of its services and its substantial advertising, promotional, and sales efforts, Plaintiff Express has achieved wide consumer acceptance for employment agency and other related services and the reputation of the highest quality and prestige.

22. By virtue of Plaintiff Express' extensive use of the EXPRESS® Marks, the EXPRESS® Marks have become so well known to the trade and purchasing public that employment agency services offered in conjunction with said EXPRESS® Marks are recognized as emanating from, or being associated with, Plaintiff Express.

23. Plaintiff Express now owns a most valuable goodwill which is symbolized by the EXPRESS® Marks and, as a result, the use of said EXPRESS® Marks substantially increases the salability of said employment agency and other services.

**Infringing Activities of Defendant**

24. Plaintiff Express has authorized Plaintiff Franchisee to open a franchised operation in Worcester, Massachusetts, and Plaintiff Franchisee has been providing temporary and permanent employment agency services pursuant to said franchise since February of 2003.

25. Plaintiff Franchisee is located in immediate proximity to, and competes directly with, Defendant Express Temps' unauthorized business operation, and, unlike Defendant Express Temps, makes lawful use of the EXPRESS® Marks.

26. Upon information and belief, long after Plaintiff Express' adoption and use of the EXPRESS® Marks in connection with employment agency and other services, and after Plaintiff Express obtained the aforementioned federal service mark registrations, Defendants adopted and used, and are now using, in this judicial district, Plaintiff's EXPRESS® Marks or marks confusingly similar thereto, including specifically EXPRESS and/or EXPRESS TEMPS (the "Infringing Marks") for personnel-related services (the "Infringing Services"), and have caused said Infringing Services and Infringing Marks to enter into interstate commerce and/or be used in interstate commerce.

27. The Infringing Services include employment and staffing services, specifically temporary and permanent employee placement to manufacturing, assembly and warehouse companies located in Massachusetts and Connecticut, which services are advertised on Defendants' web site located at <http://www.extemp.com>, a copy of which is attached hereto as **Exhibit 13** and incorporated by reference herein, and, upon information and belief, at trade shows.

28. Defendants are infringing upon Plaintiffs' proprietary rights in its EXPRESS® Marks by offering Infringing Services in connection with the terms EXPRESS and/or EXPRESS TEMPS.

29. Defendants knew or should have known of the existence of the EXPRESS® Marks at all relevant times, as a result of direct competition, the constructive notice provided by the registration of the EXPRESS® Marks, and Plaintiff Express' continuous use of EXPRESS as a trade name, in various domain names, and in interstate commerce for at least twenty (20) years.

30. Defendants are not licensed by Plaintiff Express, and at all relevant times were not authorized by Plaintiff Express, or any authorized agent of Plaintiff Express, to provide, advertise, sell and/or offer for sale such Infringing Services in connection with the EXPRESS® Marks or the Infringing Marks.

31. It is manifest from the activities of Defendants that they adopted the Infringing Marks, and continue using such marks despite Plaintiff Express' demands that they cease and desist, with the intent of misleading the public into believing that there is a connection between Plaintiff Express and its authorized franchisees, on the one hand, and Defendants, on the other, or that Plaintiffs sponsor or are affiliated with the activities of Defendants.

32. The activities of Defendants complained of herein were and are continuing to be done willfully, with knowledge that such conduct was and is in direct contravention of Plaintiff Express' EXPRESS® Marks and Plaintiffs' other proprietary rights, and were and are likely to confuse, mislead and deceive purchasers and members of the public, and will continue to be unless enjoined by this Court.

**COUNT I**

**FEDERAL TRADEMARK INFRINGEMENT  
IN VIOLATION OF LANHAM ACT § 32(1)  
(15 U.S.C. § 1114(1))**

33. Plaintiffs repeat and reallege all of the allegations contained in the preceding paragraphs of this Complaint as though the same were fully written herein.

34. Plaintiff Express' EXPRESS® Marks are in full force and effect, and have never been abandoned.

35. The EXPRESS® Marks are inherently distinctive.

36. The EXPRESS® Marks are widely used by Plaintiff Express and its franchisees throughout the United States, its possessions and various other foreign countries.

37. Plaintiff Express intends to reserve and maintain its rights with respect to its EXPRESS® Marks and corresponding registrations, and to continue to use its EXPRESS® Marks through the provision of employment agency and other related services in connection therewith.

38. By virtue of the goodwill and reputation for quality associated with Plaintiff Express' EXPRESS® Marks and extensive sale of various services promoting, advertising and utilizing said EXPRESS® Marks, the EXPRESS® Marks have developed a secondary meaning and significance in the minds of the purchasing public. The diverse services provided in connection therewith are immediately identified by the purchasing public with Plaintiff Express and its authorized franchisees.

39. Further, the unauthorized use by Defendants of the EXPRESS® Marks, as alleged herein, reproduces, counterfeits, copies, colorably imitates, and constitutes infringement of the EXPRESS® Marks and is likely to cause confusion and mistake in the minds of the purchasing public as to the source of the services in violation of 15 U.S.C. § 1114(1).

40. Moreover, Plaintiffs are aware of actual instances in which the purchasing public has confused Defendants' Infringing Services and Infringing Marks with those of Plaintiff Express and its authorized franchisees. For example, Plaintiffs are aware of the following instances of actual confusion:

- a. A job applicant scheduled an appointment to meet with Plaintiff Franchisee. The applicant reported to the Franchisee that she mistakenly went to the offices of Defendant Express Temps for her appointment with Plaintiff Franchisee. The applicant further reported that Defendant Express Temps interviewed her and offered her a job without disclosing that Defendant Express Temps was not the Plaintiff Franchisee. The applicant reported that she rejected the offer once she realized that she was in the wrong office.
- b. An existing client of Plaintiff Franchisee informed Plaintiff Franchisee that Plaintiff Franchisee was the exclusive supplier of employment and staffing services to the client. Subsequently, Plaintiff Franchisee visited the client's plant and observed temporary workers that Plaintiff Franchisee had not placed. Plaintiff Franchisee queried the client and was told that the client had phoned Defendant Express Temps with the belief that client was phoning Plaintiff Franchisee.

41. The activities of Defendants complained of herein constitute willful and intentional infringement of Plaintiff Express' EXPRESS® Marks in total disregard of Plaintiffs' proprietary rights, and were commenced and have continued in spite of Defendants' knowledge that the use of any of the EXPRESS® Marks, or any reproduction, counterfeit, copy or colorable imitation thereof, was and is in direct contravention of Plaintiffs' rights.

42. Defendants unauthorized use of the Infringing Marks is greatly and irreparably damaging to Plaintiffs in the form of: (i) loss of income; (ii) lessening and dilution of the EXPRESS® Marks; (iii) interference with Plaintiffs' ability to exploit their respective rights; (iv) confusion in the marketplace as to the duly authorized source of the services provided in conjunction with the EXPRESS® Marks; and (v) impairment of the goodwill Plaintiff Express has in its EXPRESS® Marks, and, if not enjoined, will continue to cause irreparable damage to the rights of Plaintiffs in the EXPRESS® Marks and to the respective businesses, reputations and goodwill of Plaintiffs.

43. Plaintiffs have no adequate remedy at law.

44. The full extent and exact amount of Plaintiffs' damages are not yet determined.

## **COUNT II**

### **UNFAIR COMPETITION, FALSE DESIGNATION OF ORIGIN, AND FALSE DESCRIPTIONS IN VIOLATION OF LANHAM ACT § 43(a) (15 U.S.C. § 1125(a))**

45. Plaintiffs repeat and reallege all of the allegations contained in the preceding paragraphs of this Complaint as though the same were fully written herein.

46. Plaintiff Express' EXPRESS® Marks are each individually distinctive, and have been used throughout the United States and are well known to the trade and members of the purchasing public.

47. The public associates and identifies the EXPRESS® Marks with Plaintiff Express and its authorized franchisees.

48. Defendants' conduct in the advertising, sale, offering for sale and/or other use of the Infringing Services provided in conjunction with the EXPRESS® Marks constitutes false designation of origin or sponsorship of said Infringing Services and tends falsely to represent that

said Infringing Services originate from Plaintiffs or that said Infringing Services and Defendants have been sponsored, approved, or licensed by Plaintiff Express or are in some way affiliated or connected with Plaintiff Express or its authorized franchisees, including specifically Plaintiff Franchisee, all in violation of 15 U.S.C. § 1125(a).

49. Defendants' actions were done willfully with full knowledge of the falsity of such designations of origin and such descriptions or representations, and with express intent to cause confusion, and mislead and deceive the purchasing public.

50. Defendants' unlawful acts constitute commercial use in interstate commerce.

51. Defendants unauthorized use of the Infringing Marks is greatly and irreparably damaging to Plaintiffs in the form of: (i) loss of income; (ii) lessening and dilution of the EXPRESS® Marks; (iii) interference with Plaintiffs' ability to exploit their respective rights; (iv) confusion in the marketplace as to the duly authorized source of the services provided in conjunction with the EXPRESS® Marks; and (v) impairment of the goodwill Plaintiff Express has in its EXPRESS® Marks, and, if not enjoined, will continue to cause irreparable damage to the rights of Plaintiffs in the EXPRESS® Marks and to the respective businesses, reputations and goodwill of Plaintiffs.

52. Plaintiffs have no adequate remedy at law.

53. The full extent and exact amount of Plaintiffs' damages are not yet determined.

### **COUNT III**

#### **FEDERAL TRADEMARK DILUTION IN VIOLATION OF LANHAM ACT § 43(c) (15 U.S.C. § 1125(c))**

54. Plaintiffs repeat and reallege all of the allegations contained in the preceding paragraphs of this Complaint as though the same were fully written herein.

55. The EXPRESS® Marks are individually inherently distinctive and famous, and have been used throughout the United States and this judicial district, and are well known to the trade and members of the purchasing public.

56. The public associates and identifies the EXPRESS® Marks with Plaintiff Express and its authorized franchisees.

57. Plaintiff Express' EXPRESS® Marks have been extensively advertised and promoted for more than twenty (20) years throughout the United States, and have received continuous, widespread national publicity.

58. By virtue of Plaintiff Express' widespread use of the EXPRESS® Marks, they became famous prior to Defendants' use of their EXPRESS and/or EXPRESS TEMPS marks.

59. The trading areas and channels of commerce and trade for the services pursuant to which the EXPRESS® Marks are used is Plaintiff Express' nationwide and international system of franchisees.

60. The degree of recognition of the EXPRESS® Marks in the trading areas and channels of commerce and trade used by Plaintiff Express is overwhelmingly universal.

61. Defendants' purported first use of the Infringing Marks occurred long after Plaintiff Express' EXPRESS® Marks became famous.

62. Defendants' Infringing Marks dilute the distinctive quality of Plaintiff Express' EXPRESS® Marks.

63. Upon information and belief, Defendants' willfully intended to trade upon the reputation of Plaintiffs and/or willfully cause dilution of the EXPRESS® Marks.

64. Defendants unauthorized use of the EXPRESS® Marks is greatly and irreparably damaging to Plaintiffs in the form of: (i) loss of income; (ii) lessening and dilution of the

distinctive quality of the EXPRESS® Marks; (iii) interference with Plaintiffs' ability to exploit their respective rights; (iv) confusion in the marketplace as to the duly authorized source of the services provided in conjunction with the EXPRESS® Marks; and (v) impairment of the goodwill Plaintiff Express has in its EXPRESS® Marks, and, if not enjoined, will continue to cause irreparable damage to the rights of Plaintiffs in the EXPRESS® Marks and to the respective businesses, reputations and goodwill of Plaintiffs.

65. Plaintiffs have no adequate remedy at law.

66. The full extent and exact amount of Plaintiffs' damages are not yet determined.

#### **COUNT IV**

##### **UNFAIR OR DECEPTIVE TRADE PRACTICES IN VIOLATION OF MASSACHUSETTS LAW (M.G.L. c. 93A, §§ 2, 11)**

67. Plaintiffs repeat and reallege all of the allegations contained in the preceding paragraphs of this Complaint as though the same were fully written herein.

68. At all material times, Plaintiffs and Defendants each were and are engaged in trade or commerce within the meaning of M.G.L. c. 93A, §§ 2, 11.

69. Defendants' actions described herein constitute an unfair method of competition and/or an unfair or deceptive act or practice in the conduct of trade or commerce, all in violation of M.G.L. c. 93A, §§ 2, 11.

70. Defendants unlawful acts, although affecting interstate commerce, have originated or taken place predominantly or substantially in the Commonwealth of Massachusetts.

71. Such violations of M.G.L. c. 93A, §§ 2, 11 by Defendants were and are knowing and/or willful.

72. Such conduct entitles Plaintiffs to all of the relief that may be granted pursuant to M.G.L. c. 93A, § 11 including inter alia, injunctive relief, treble damages and an award of attorneys' fees.

73. Such conduct on the part of Defendants has caused and will continue to cause irreparable injury to Plaintiffs, for which Plaintiffs have no adequate remedy at law.

**COUNT V**

**TRADEMARK DILUTION  
IN VIOLATION OF MASSACHUSETTS LAW  
(M.G.L. c. 110B, §12)**

74. Plaintiffs repeat and reallege all of the allegations contained in the preceding paragraphs of this Complaint as though the same were fully written herein.

75. Plaintiff Express' EXPRESS® Marks are valid and distinctive under Massachusetts law.

76. The EXPRESS® Marks have acquired secondary meaning through widespread promotion, advertising and use such that the purchasing public recognizes employment agency and personnel services offered in conjunction with said EXPRESS® Marks as emanating from, or being associated with, Plaintiff Express and its authorized franchisees.

77. Defendants' actions described herein have caused a likelihood of dilution of the distinctive quality of the EXPRESS® Marks, and a likelihood of injury to Plaintiffs' business reputation, in violation of M.G.L. c. 110B, § 12, and analogous provisions of the laws of other states.

**COUNT VI**

**TRADEMARK AND TRADE NAME  
INFRINGEMENT AND UNFAIR COMPETITION  
IN VIOLATION OF MASSACHUSETTS COMMON LAW**

78. Plaintiffs repeat and reallege all of the allegations contained in the preceding paragraphs of this Complaint as though the same were fully written herein.

79. Plaintiff Express is the owner of all right, title and interest, including all common law rights, in and to the EXPRESS® Marks used by Plaintiffs by virtue of its extensive advertising, promotion and sale of employment agency and other related services under such Marks as set forth in the preceding paragraphs of this Complaint.

80. The Infringing Services are provided, advertised, sold or offered for sale in conjunction with matter constituting a replica and/or imitation of Plaintiff Express' EXPRESS® Marks.

81. Plaintiffs and Defendants are each engaged in trade and commerce in the Commonwealth of Massachusetts.

82. Defendants unlawful acts, although affecting interstate commerce, have originated or taken place substantially in the Commonwealth of Massachusetts.

83. The provision and/or sale by Defendants of the Infringing Services under the Infringing Marks illegally reproduces, counterfeits, copies, and colorably imitates Plaintiff Express' EXPRESS® Marks, and constitutes unfair competition, and is likely to cause confusion and mistake in the minds of the trade and purchasing public as to the source of the services and to cause purchasers to believe such Infringing Services are authentic services of Plaintiffs when, in fact, they are not.

84. By such actions in infringing the EXPRESS® Marks, Defendants are misappropriating and improperly trading upon the enviable reputation and goodwill of Plaintiffs and are impairing the distinctiveness of Plaintiffs' valuable rights in and to such EXPRESS® Marks. Defendants' actions are intended to and do pass off Defendants' services as those of Plaintiffs.

85. As set forth above, the activities of Defendants complained of herein constitute willful and intentional acts of service mark and trade name infringement, passing off, misappropriation and unfair competition under Massachusetts law.

86. Defendants unauthorized use of the EXPRESS® Marks is greatly and irreparably damaging to Plaintiffs in the form of: (i) loss of income; (ii) lessening and dilution of the EXPRESS® Marks; (iii) interference with Plaintiffs' ability to exploit their respective rights; (iv) confusion in the marketplace as to the duly authorized source of the services provided in conjunction with the EXPRESS® Marks; and (v) impairment of the goodwill Plaintiff Express has in its EXPRESS® Marks, and, if not enjoined, will continue to cause irreparable damage to the rights of Plaintiffs in the EXPRESS® Marks and to the respective businesses, reputations and goodwill of Plaintiffs.

87. Plaintiffs have no adequate remedy at law.

88. The full extent and exact amount of Plaintiffs' damages are not yet determined.

## **COUNT VII**

### **INTENTIONAL TORTIOUS INTERFERENCE WITH EXISTING AND PROSPECTIVE CONTRACTUAL RELATIONS**

89. Plaintiffs repeat and reallege all of the allegations contained in the preceding paragraphs of this Complaint as though the same were fully written herein.

90. As set forth above, Defendants' actions impair and interfere with Plaintiff Express' existing and prospective franchise agreements with its duly authorized franchisees, including specifically its agreement with Plaintiff Franchisee.

91. As set forth above, the activities of Defendants complained of herein constitute willful and intentional acts.

92. Defendants intentional tortious interference with Plaintiffs' existing and prospective contractual relations is greatly and irreparably damaging to Plaintiffs in the form of: (i) loss of income; (ii) lessening and dilution of the EXPRESS® Marks; (iii) interference with Plaintiffs' ability to exploit their respective rights, including Plaintiff Franchisee's merchandising rights; (iv) confusion in the marketplace as to the duly authorized source of the services provided in conjunction with the EXPRESS® Marks; (v) impairment of the goodwill Plaintiff Express has in its EXPRESS® Marks; and (vi) impairment of and interference with Plaintiff Express' existing and prospective franchise agreements with its duly authorized franchisees, and, if not enjoined, will continue to cause irreparable damage to the rights of Plaintiffs in the EXPRESS® Marks and to the respective businesses, reputations and goodwill of Plaintiffs.

93. Plaintiffs have no adequate remedy at law.

94. The full extent and exact amount of Plaintiffs' damages are not yet determined.

#### **JURY DEMAND**

95. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs respectfully demand a trial by jury on all counts so triable.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that:

1. Defendants, their agents, servants, employees, attorneys, representatives, successors and assigns and all persons, firms or corporations in active concert or participation with Defendants, or any of them, be enjoined and restrained during the pendency of this action and permanently from:

- (a) directly or indirectly infringing the above described EXPRESS® Marks of Plaintiff Express in any manner, including generally, but not limited to, advertising, selling, and/or offering for sale any services which infringe said EXPRESS® Marks, and specifically;
  - (1) using said EXPRESS® Marks or any of them or any marks similar thereto, including without limitation EXPRESS and/or EXPRESS TEMPS, or any reproduction, counterfeit, copy, or colorable imitation of said EXPRESS® Marks in connection with the advertising, sale, offering for sale, and/or other use of any temporary or permanent employment agency or personnel services;
  - (2) applying said EXPRESS® Marks or any such reproduction, counterfeit, copy or colorable imitation to any label, sign, print, package, wrapper, receptacle, or advertisement used in connection with the provision, sale, and/or offering for sale, of any temporary or permanent employment agency or personnel services; or,
- (b) using any marks, including without limitation EXPRESS and/or EXPRESS TEMPS, that tend falsely to represent that, or are likely to confuse, mislead, or deceive purchasers, Defendants' customers, or members of the public that unauthorized services promoted, provided,

advertised, sold and/or offered for sale by Defendants originate from Plaintiffs, or that said services have been sponsored, approved, or licensed by or associated with Plaintiffs or are in some way connected or affiliated with Plaintiffs;

- (c) engaging in any conduct that tends falsely to represent that, or is likely to confuse, mislead, or deceive purchasers, Defendants' customers, or members of the public to believe that the actions of Defendants or Defendants themselves are connected with Plaintiffs, are sponsored, approved, or licensed by Plaintiffs, or are in some way connected or affiliated with Plaintiffs;
- (d) affixing, applying, annexing or using in connection with the promotion, provision, advertising, sale, and/or offering for sale or other use of any temporary or permanent employment agency or personnel services, a false description or representation, including words or other symbols, tending to falsely describe or represent such services as being those of Plaintiffs;
- (e) otherwise competing unfairly with Plaintiffs in any manner;
- (f) diluting and infringing the aforementioned EXPRESS® Marks and damaging Plaintiffs' goodwill, reputation and business;
- (g) destroying or otherwise disposing of:
  - (1) signage bearing Plaintiff Express' EXPRESS® Marks or EXPRESS or EXPRESS TEMPS;

- (2) any other products which reproduce, copy, counterfeit, imitate or bear any of Plaintiff Express' EXPRESS® Marks, or EXPRESS or EXPRESS TEMPS;
- (3) any promotional or advertising material, labels, packages, wrappers, containers, or any other items which reproduce, copy, counterfeit, imitate or bear any of Plaintiff Express' EXPRESS® Marks, EXPRESS or EXPRESS TEMPS; and
- (4) any sales and supplier or customer journals, ledgers, invoices, purchase orders, inventory control documents, bank records, catalogues, recordings of any type whatsoever and all other business records or documents which concern the provision, advertising, sale or offering for sale of such employment agency services.

2. Defendants be required to account for and pay to Plaintiff Express all profits and damages resulting from Defendants' infringing and unfair activities, with such profits and damages in any event to exceed the sum or amount of \$100,000 exclusive of interest and costs, and that the award to Plaintiff Express be increased as provided for under applicable law;

3. Plaintiffs recover from Defendants their costs of this action and reasonable attorneys' fees;

4. Defendants be required to pay to Plaintiff Express punitive damages in such amount sufficient to deter Defendants from future dealing in services bearing any reproduction, counterfeit, copy or colorable imitation of Plaintiff Express' EXPRESS® Marks;

5. Defendants be required to post on their web site(s), and prepare and send to each of their active clients and each past client for whom they have rendered services within the past two (2) years, a notice indicating that Defendants are not affiliated with or sponsored by Plaintiffs, and that Plaintiff Express and its authorized franchisees, and not Defendants, have the exclusive right to the use of the EXPRESS® Marks, EXPRESS and/or EXPRESS TEMPS;

6. Defendants be required to cancel, withdraw, delete or amend any trade name, fictitious name registration or application, state or federal trademark registration or application, and/or any incorporation papers including the term EXPRESS so as to exclude, delete or cancel the term EXPRESS therefrom;

7. Subject to the web site notice required above, Defendants be required to immediately delete from their web site(s) any and every use of EXPRESS® Marks or any of them or any marks similar thereto, including without limitation EXPRESS and/or EXPRESS TEMPS.

8. Defendants be required to file a compliance report with the Court and Plaintiffs' counsel detailing the precise manner in which Defendants have complied with the terms of any judgment entered herein, within ten (10) days of the entry of such judgment; and

9. Plaintiff have all other and further relief as the Court may deem just and proper under the circumstances.

Dated: January 9, 2004

Respectfully submitted,

**FLETCHER, TILTON & WHIPPLE, P.C.**

By: William D. Jalkut/ate  
William D. Jalkut, BBO#250020  
370 Main Street  
Worcester, Massachusetts 01608  
Tel: (508) 798-8621  
Fax: (508) 791-1201

**Attorneys for Plaintiffs Express Franchise Services, L.P., and WRS Personnel Finders of Massachusetts, Inc., d/b/a Express Personnel Services**

649790

## CIVIL COVER SHEET

04-40005

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

EXPRESS FRANCHISE SERVICES, L.P., a Texas limited partnership, and WRS PERSONNEL FINDERS OF MASSACHUSETTS, INC., d/b/a EXPRESS PERSONNEL SERVICES, a Massachusetts corporation, County of Residence of First Listed Plaintiff Oklahoma  
(EXCEPT IN U.S. PLAINTIFF CASES)

## DEFENDANTS FILED

EXPRESS TEMPS, INC., a Massachusetts corporation, and WILLIAM J. COMEAU, an individual and citizen of Massachusetts  
County of Residence of First Listed Plaintiff Worcester

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED  
DISTRICT OF MASS.

(c) Attorney's (Firm Name, Address, and Telephone Number)  
William D. Jalkut, Esq.  
Fletcher, Tilton & Whipple, P.C.  
370 Main St.  
Worcester, MA 01608 (508) 798-8621

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- |  |  |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)   |

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b><input checked="" type="checkbox"/> PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark	
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<b><input type="checkbox"/> LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Emp. Ret. Inc. Security Act	<b><input type="checkbox"/> SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ft) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIW W (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RS1 (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
			<b><input type="checkbox"/> FEDERAL TAXSUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609		

## V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from another district (specify)     6 Multidistrict Litigation     7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Federal Trademark Act of 1946 as amended, 15 U.S.C. Sec. 1501, et seq.

VII. REQUESTED IN COMPLAINT:  CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

VIII. RELATED CASE(S) (See instructions):  
IF ANY JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD  
1-9-04 William D. Jalkut, Esq.

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

04-40005

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTSFILED  
IN CLERKS OFFICE

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Express Franchise Services, L.P., et al  
v. Express Temp ~~2004 JAN - 01 4:02~~

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950.
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

\*Also complete AO 120 or AO 121  
for patent, trademark or copyright cases

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

N/A

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES

NO

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

YES

NO

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES

NO

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

YES

NO

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

YES

NO

A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?

EASTERN DIVISION

CENTRAL DIVISION

WESTERN DIVISION

B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION

CENTRAL DIVISION

WESTERN DIVISION

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME William D. Jalkut

ADDRESS Fletcher, Tilton & Whipple, P.C., 370 Main St., Worcester, MA 01608

TELEPHONE NO. (508) 798-8621